



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-6284-CR-LENARD/SIMONTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID I. ALTMAN,

Defendant.

ORDER DEEMING MOOT, WITHOUT PREJUDICE,
ORIGINAL LETTER MOTION SEEKING RETURN OF PROPERTY

Presently pending before this Court is Defendant Altman's Letter Motion to Compel the government to comply with the Court's prior Order, which granted the Defendant's Motion for Return of Property (DE # 40). This Motion is referred to the undersigned Magistrate Judge (DE # 41).

On July 14, 2003, the District Court granted Defendant Altman's motion for the Government to return to him computer disks, seized by the FBI during a search of Altman's home, and which are unrelated to his crime. The Court noted that the Government requested six months to comply with Altman's request, and ordered the Government to return within six months from the date of the order (by January 14, 2004), any computer disk or other property which does not contain visual depictions of child pornography or other information relating to the collection of child pornography (DE # 39). Defendant Altman subsequently filed a letter requesting the Court to Order the Government to comply with the District Court's Order (DE # 40). On April 30, 2004, the undersigned ordered the Government to respond to Defendant Altman's motion on or before May 15, 2004 (DE # 42). On July 2, 2004, the undersigned entered an Order

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requiring compliance (DE # 43). Thereafter, the Government filed a Notice of Compliance in which it stated that it had returned all readable disks which did not contain pornography and which were not copyright violations (DE # 44). The government provided a detailed inventory of the disks it had seized, as well as a report of the results of its examination of those disks. It appears that the government has made all readable disks which were not classified as pornography available for return to the Defendant's designated agent.

Subsequently, the Defendant filed a Traverse to the Government's Response (DE # 45, filed 8/10/04). In his Traverse, the Defendant states that he wants to ensure that certain disks are returned to him, as well as certain files on the hard drive of his computer. His original request did not encompass files on the hard drive of his computer, and the list of more than 150 disks that he seeks appears to include many of the disks that the government has returned.

Therefore, the original request to compel compliance with the Court's Order is moot, since the government and the defendant acknowledge that the government has returned disks which are readable and which do not contain pornography. This ruling is without prejudice, however, to the Defendant's right to seek specific disks which the government continues to withhold, if after examination of the disks returned, and consultation with the government, there is a dispute concerning the return of such disks and/or files on the hard drive. The burden is on the movant, however, to identify with particularity the disks which were not returned and which he seeks. The list of over 150 disks which is contained in the Traverse includes many disks which the government has apparently returned, or intended to return, and it is not readily apparent whether there are any disks sought in the Traverse which were not returned. Prior to seeking further

judicial intervention in this matter, the Defendant or his representative to whom the disks are returned must review the disks provided by the government, and consult with the government regarding any missing disks which the Defendant seeks. If there is a dispute over the return of such disks, the Defendant may file a Motion to Compel the Government to Return Additional Disks.

Therefore, based upon a review of the record as a whole, it is hereby
ORDERED AND ADJUDGED that Defendant Altman's Letter Motion requesting the return of property (DE # 40) is **DEEMED MOOT**, without prejudice to file a Motion to Compel the Government to Return Additional Disks, after consultation with the government.

DONE AND ORDERED in Miami, Florida, this 2nd day of November, 2004.



ANDREA M. SIMONTON
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

The Honorable Joan A. Lenard
United States District Judge
AUSA Neil Karadbil, Esq.
Facsimile #954-356-7336
David I. Altman, Pro Se
Low Security Correctional Institution
Reg. No. 55477-004 Durham-B
P.O. Box 999
Butner, NC 27509-0999